

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARMANDO SARINANA,

No. C 18-2547 WHA (PR)

Plaintiff,

## **ORDER OF SERVICE; INSTRUCTIONS TO CLERK**

V.

A. PADILLA,

Defendant.

## INTRODUCTION

16 Plaintiff, a California state prisoner, filed this pro se civil rights case under 42 U.S.C.  
17 1983 alleging that defendant — an official at the California Training Facility — violated his  
18 constitutional rights. He is granted leave to proceed in forma pauperis in a separate order. For  
19 the reasons discussed below, the complaint is ordered served upon defendant.

## ANALYSIS

## **A. STANDARD OF REVIEW**

22       Federal courts must engage in a preliminary screening of cases in which prisoners seek  
23 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
24 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims  
25 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek  
26 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro  
27 se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699  
28 (9th Cir. 1990).

1           Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the  
2 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the  
3 statement need only ""give the defendant fair notice of what the . . . . claim is and the grounds  
4 upon which it rests.\"" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted).  
5           Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a  
6 plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief requires more than  
7 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not  
8 do. . . . Factual allegations must be enough to raise a right to relief above the speculative level."  
9 *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A  
10 complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.*  
11 at 1974.

12           To state a claim under 42 U.S.C. 1983, a plaintiff must allege two essential elements:  
13 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that  
14 the alleged deprivation was committed by a person acting under the color of state law. *West v.*  
15 *Atkins*, 487 U.S. 42, 48 (1988).

16           **B.     LEGAL CLAIMS**

17           When liberally construed, plaintiff's allegations that defendant disciplined him because of  
18 his mental illness, did not allow him to present evidence and witnesses at his disciplinary  
19 hearing, and placed him in conditions that exacerbated his mental illness, state a cognizable  
20 claim for the violation of his right to due process and to be free from cruel and unusual  
21 punishment.

22           **CONCLUSION**

23           For the reasons set out above, it is hereby ordered as follows:

24           1. The clerk shall issue summons and the United States Marshal shall serve, without  
25 prepayment of fees, a copy of the complaint (ECF Nos. 1, 6) with all attachments thereto, and a  
26 copy of this order upon defendant **Lieutenant A. Padilla at the California Training Facility in**  
27 **Soledad, California.** A courtesy copy of the complaint with attachments and this order shall  
28

1 also be mailed to the California Attorney General's Office.

2       2. Defendant **shall** file an answer in accordance with the Federal Rules of Civil  
3 Procedure.

4       3. In order to expedite the resolution of this case:

5           a. No later than **91 days** from the date this order is filed, defendant shall file a  
6 motion for summary judgment or other dispositive motion. If defendant is of the opinion that  
7 this case cannot be resolved by summary judgment, he shall so inform the court prior to the date  
8 the summary judgment motion is due. All papers filed with the court shall be promptly served on  
9 the plaintiff.

10          b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the  
11 court and served upon defendant no later than **28 days** from the date of service of the motion.

12 Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to him  
13 pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and *Klingele v.*  
14 *Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

15          c. Defendant **shall** file a reply brief no later than **14 days** after the date of service  
16 of the opposition.

17           d. The motion shall be deemed submitted as of the date the reply brief is due. No  
18 hearing will be held on the motion unless the court so orders at a later date.

19          e. Along with his motion, defendant shall proof that they served plaintiff the  
20 *Rand* warning at the same time they served him with their motion. Failure to do so will result in  
21 the summary dismissal of their motion.

22       4. All communications by the plaintiff with the court must be served on defendant, or  
23 defendant's counsel once counsel has been designated, by mailing a true copy of the document to  
24 defendant or defendant's counsel.

25       5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No  
26 further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required  
27 before the parties may conduct discovery.

1       6. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court  
2 informed of any change of address and must comply with the court's orders in a timely fashion.  
3 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to  
4 Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: June 11 , 2018.

W. Almy

**WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE**

## **NOTICE -- WARNING (SUMMARY JUDGMENT)**

2 If defendants move for summary judgment, they are seeking to have your case dismissed.  
3 A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if  
4 granted, end your case.

5 Rule 56 tells you what you must do in order to oppose a motion for summary judgment.  
6 Generally, summary judgment must be granted when there is no genuine issue of material  
7 fact--that is, if there is no real dispute about any fact that would affect the result of your case, the  
8 party who asked for summary judgment is entitled to judgment as a matter of law, which will end  
9 your case. When a party you are suing makes a motion for summary judgment that is properly  
10 supported by declarations (or other sworn testimony), you cannot simply rely on what your  
11 complaint says. Instead, you must set out specific facts in declarations, depositions, answers to  
12 interrogatories, or authenticated documents, as provided in [current Rule 56(c)], that contradict  
13 the facts shown in the defendant's declarations and documents and show that there is a genuine  
14 issue of material fact for trial. If you do not submit your own evidence in opposition, summary  
15 judgment, if appropriate, may be entered against you. If summary judgment is granted, your case  
16 will be dismissed and there will be no trial.